

REMARKS

Claims 1-21 are pending in this application. Non-elected claim 1 is withdrawn from consideration by the Examiner. By this Amendment, claims 1 and 5 are amended, claim 21 is added and the Abstract is amended. Support for the amendments to the claims and new claim may be found, for example, at page 2, lines 19-34 and in the original claims. No new matter is added.

In view of the foregoing amendments and the following remarks, reconsideration and allowance are respectfully requested.

I. Claim for Priority

The present application claims benefit to Provisional Application No. 60/541,238, filed on February 4, 2004, in a language other than English. The Office Action states that an English language translation of the non-English language provisional application and a statement that the translation is accurate have not been filed in the provisional application. Applicants are concurrently submitting an English language translation and a statement that the translation is accurate in Provisional Application No. 60/541,238. Attached herewith is a Confirmation of Filing of Translation of Provisional Application.

II. Objection to the Abstract

The Office Action objects to the Abstract for informalities. By this Amendment, the Abstract is amended to overcome the objection. Accordingly, reconsideration and withdrawal of the objection are respectfully requested.

III. Rejection Under 35 U.S.C. §103

A. Lydzinski and Fellows

The Office Action rejects claims 2, 9-12 and 20 under 35 U.S.C. §103(a) as having been obvious over U.S. Patent Application Publication No. 2003/0099692 to Lydzinski et al.

("Lydzinski") in view of U.S. Patent No. 4,925,667 to Fellows et al. ("Fellows"). Applicants respectfully traverse the rejection.

Claim 20 is directed to a method for making up the lips that comprises "applying, to the lips, a cosmetic product comprising an anhydrous film, the film comprising at least one layer composed of a matrix based on a water-soluble polymer in which is included at least one coloring agent." The applied references do not disclose and would not have rendered obvious this step for at least the following reasons.

An ordinarily skilled artisan would not have had any reason or rationale to have combined Lydzinski and Fellows in a manner that would practice the claim step of "applying, to the lips, a cosmetic product comprising an anhydrous film." Lydzinski is directed to oral films that are, by definition, used to deliver an agent into a human or animal mouth. See Lydzinski at paragraph [0006]. The Office Action acknowledges that the oral film of Lydzinski is applied to the oral cavity, or on the tongue. See page 5. Nowhere in Lydzinski does it disclose the application of cosmetic products onto the lips of humans or animals.

Fellows does not cure deficiencies with respect to Lydzinski because it does not disclose that a cosmetic product comprising an anhydrous film is applied to the lips. In contrast, Fellows discloses a system for distributing and sampling cosmetics where the application of the cosmetic composition is achieved by "rubbing one's finger across the exposed microencapsulated cosmetic surface," thereby removing the cosmetic from its film substrate. See Fellows at Abstract and col. 4, lines 20-24. Subsequently, the user applies the cosmetics that have gathered on her finger (or on a brush) onto keratinous material, such as the lips, rather than applying the film product from which the cosmetic has been removed. Thus, Fellows does not disclose the claim step of applying to the lips a cosmetic product comprising an anhydrous film. An ordinarily skilled artisan would therefore not have had any

reason or rationale to combine Lydzinski and Fellows in a manner that achieves a method that comprises applying a cosmetic product comprising an anhydrous film to the lips.

For at least these reasons, the applied references would not have rendered obvious claim 20. Claims 2 and 9-12 depend from claim 20 and, thus, also would not have been rendered obvious by the applied references for at least the same reasons. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

B. Lydzinski, Fellows and Lu

The Office Action rejects claims 3-8 and 15 under 35 U.S.C. §103(a) as having been obvious over Lydzinski in view of Fellows and further in view of U.S. Patent Application Publication No. 2003/0235523 to Lu et al. ("Lu"). Applicants respectfully traverse the rejection.

1. Claim 15

Claim 15 requires "applying, to the lips, a cosmetic product comprising an anhydrous film." Deficiencies of Lydzinski and Fellows with respect to a method comprising such a step are discussed above. Lu does not cure deficiencies of Lydzinski and Fellows. Instead, Lu merely discloses a cosmetic composition that is "anhydrous and contains at least one film-forming lyposoluble or lypodispersible polymer." Lu does not disclose the application of a cosmetic product comprising an anhydrous film onto the lips.

2. Claims 3-8

Claims 3-8 depend from claim 20 and, thus, contain all of the features of claim 20. Deficiencies of Lydzinski and Fellows with respect to claim 20 are discussed above. Lu, which is applied by the Office Action for additional features recited in claims 3-8, does not cure deficiencies of Lydzinski and Fellows with respect to claim 20.

3. Conclusion

For at least these reasons, the applied references would not have rendered obvious claims 3-8 and 15. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

C. Lydzinski, Fellows and Tan

The Office Action rejects claims 13, 14 and 16-19 under 35 U.S.C. §103(a) as having been obvious over Lydzinski in view of Fellows and further in view of U.S. Patent No. 6,511,602 to Tan et al. ("Tan"). Applicants respectfully traverse the rejection.

1. Claims 16-19

Claims 16-19 require the step of "applying, to the lips, a cosmetic product comprising an anhydrous film." Deficiencies of Lydzinski and Fellows with respect to a method comprising such a step are discussed above. Tan does not cure deficiencies of Lydzinski and Fellows. Instead, Tan merely discloses a cosmetic composition in the form of an "anhydrous lipstick or lip gloss." See Tan at col. 6, lines 59-66. Nowhere in Tan does it disclose the application of a cosmetic product comprising an anhydrous film onto the lips.

2. Claims 13 and 14

Claims 13 and 14 depend from claim 20 and, thus, contain all of the features of claim 20. Deficiencies of Lydzinski and Fellows with respect to claim 20 are discussed above. Tan, which is applied by the Office Action for additional features recited in claims 13 and 14, does not cure deficiencies of Lydzinski and Fellows with respect to claim 20.

3. Claim 19

Claim 19 depends from claim 15 and, thus, contains all of the features of claim 15. Deficiencies of Lydzinski and Fellows with respect to claim 15 are discussed above. Tan, which is applied by the Office Action for additional features recited in claim 19, does not cure deficiencies of Lydzinski and Fellows with respect to claim 15.

4. Conclusion

For at least these reasons, the applied references would not have rendered obvious claims 13, 14 and 16-19. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

IV. New Claim

By this Amendment, new claim 21 is presented. New claim 21 depends from claim 20 and, thus, distinguishes over the applied references for at least the same reasons discussed above with respect to claim 20, as well as for the additional features it recites. Specifically, claim 21 requires that the "cosmetic product is applied to the lips in the form of a film and the entire film is applied." The applied references do not disclose and would not have rendered obvious this claim feature for at least the following reasons.

According to claim 21, during application of the cosmetic product, the entire film is applied, for example, in a single application. See specification at page 1, lines 31-32. The cosmetic composition removed from its film substrate in Fellows is no longer in the form of a film when applied to the lips, and certainly the entire film is not applied. Instead, the user rubs a desired amount of the cosmetic product onto his fingers, removing it from the film product, and then applies the cosmetic onto her lips using her fingers. No film, much less the entire film, is applied.

Moreover, the cosmetic product of claim 21 offers hygienic advantages. The risk of contamination of the cosmetic product is reduced because the user applies an entire film. Specifically, the user's fingers are in contact with only the film that is applied and can be isolated from other films that may be provided in the cosmetic package, thereby reducing the risk of contamination by the external environment. See specification at page 1, lines 18-27. However, as indicated above, Fellows requires the user's finger (or a brush) to remove some cosmetic composition from the substrate, while leaving some cosmetic composition on the substrate, thereby increasing the risk of contaminating the remaining composition. See

Fellows at col. 5, lines 17-18. Thus, the method of Fellows does not offer the hygienic advantages provided by the method of claim 21.

For at least these reasons, claim 21 distinguishes over the applied references.

Accordingly, prompt examination and allowance of new claim 21 are respectfully requested.

V. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachments:

Amended Abstract

Confirmation of Filing of Translation of Provisional Application

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